

**Superseded 5/10/2016**

**31A-15-202 Definitions.**

As used in this part:

- (1) "Completed operations liability" means liability, including liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability, arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:
  - (a) any person who performs that work; or
  - (b) any person who hires an independent contractor to perform that work.
- (2) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means:
  - (a) for a corporation, the state in which the purchasing group is incorporated; and
  - (b) for an unincorporated entity, the state of its principal place of business.
- (3) "Hazardous financial condition" means that a risk retention group, based on its present or reasonably anticipated financial condition, although not yet financially impaired or insolvent, is unlikely to be able:
  - (a) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
  - (b) to pay other obligations in the normal course of business.
- (4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.
- (5)
  - (a) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to other persons, resulting from or arising out of:
    - (i) any profit or nonprofit business, trade, product, professional or other services, premises, or operations; or
    - (ii) any activity of any state or local government or any agency or political subdivision of any state or local government.
  - (b) "Liability" does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the federal Employers' Liability Act.
- (6) "NAIC" means the National Association of Insurance Commissioners.
- (7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities rather than from responsibilities or activities referred to in Subsection (5).
- (8) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group, including:
  - (a) information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
  - (b) for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;
  - (c) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
  - (d) pro forma financial statements and projections;

- (e) appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;
  - (f) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements;
  - (g) identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and
  - (h) any other matters required by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.
- (9)
- (a) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, if the liability arises out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.
  - (b) "Product liability" does not include the liability of any person for those damages described in Subsection (9)(a) if the product involved was in the possession of the person when the incident giving rise to the claim occurred.
- (10) "Purchasing group" means any group which:
- (a) has as one of its purposes the purchase of liability insurance on a group basis;
  - (b) purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in Subsection (10)(c);
  - (c) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, products, services, premises, or operations; and
  - (d) is domiciled in any state.
- (11) "Risk retention group" means any corporation or other limited liability association:
- (a) whose primary activity consists of assuming and spreading all, or any portion of, the liability exposure of its group members;
  - (b) which is organized for the primary purpose of conducting the activity described under Subsection (11)(a);
  - (c) which:
    - (i) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
    - (ii)
      - (A) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before January 1, 1985, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of that state;
      - (B) however, any such group as described in Subsection (11)(c)(ii)(A) shall be considered to be a risk retention group only if it has been engaged in business continuously since January 1, 1985, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as these terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986;
  - (d) which does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the excluded person;
  - (e) which:

- (i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group; or
- (ii) has as its sole owner an organization which:
  - (A) has as its members only persons who comprise the membership of the risk retention group; and
  - (B) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group;
- (f) whose members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business trade, products, services, premises or operations;
- (g) whose activities do not include providing insurance other than:
  - (i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and
  - (ii) reinsurance with respect to the liability of any other risk retention group, or any members of the other group, which is engaged in businesses or activities so that the group or member meets the requirement described in Subsection (11)(f) for membership in the risk retention group which provides the reinsurance; and
- (h) the name of which includes the phrase "risk retention group."